

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

EDWARD E. SEELY,
Plaintiff,

vs.

JIM GIBBONS, et al.,
Defendants.

3:08-cv-00125-RCJ (RAM)

**REPORT & RECOMMENDATION
OF U.S. MAGISTRATE JUDGE**

This Report and Recommendation is made to the Honorable Robert C. Jones, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR IB 1-4. Before the court is Plaintiff's Motion for Preliminary and Permanent Injunction and for Protective Order Against the Illegal Release and Disclosure of the Plaintiff's Confidential and Private Medical Records and Files. (Doc. #239.)¹ Defendants have opposed (Doc. #247), and Plaintiff replied (Doc. #256 and Doc. #257). After a thorough review, the court recommends that Plaintiff's motion be denied as moot.

At all relevant times Plaintiff Edward E. Seely (Plaintiff) was an inmate in custody of the Nevada Department of Corrections (NDOC) at Northern Nevada Correctional Center (NNCC). (Pl.'s 2d Am. Compl. (Doc. #11).) Plaintiff, a *pro se* litigant, brings this action pursuant to 42 U.S.C. § 1983. (*Id.*) The remaining Defendants are Robert Bannister, M.D.,

¹ Refers to the court's docket number.

1 John Peery, and Tony Corda. (See Doc. #11, Doc. #158 2, and Doc. #221 1.) Plaintiff's
2 operative complaint asserts that Defendants were deliberately indifferent to his conditions of
3 confinement and to his serious medical needs, among other claims. (Doc. #11.)

4 Defendants previously filed a motion for summary judgment, and in connection with
5 that motion they filed a motion to file Exhibit H, consisting of Plaintiff's medical records, *in*
6 *camera*. (Doc. #221 and Doc. #222.) Plaintiff opposed the motion to file the records *in*
7 *camera*, and also opposed the motion for summary judgment. (Doc. #229 and Doc. #248.)
8 The court issued its Report and Recommendation with respect to both of those motions on
9 February 2, 2011. (Doc. #271.)

10 The court agreed with Defendants that because Plaintiff's complaint asserts an Eighth
11 Amendment violation premised on Defendants' deliberate indifference to Plaintiff's serious
12 medical needs, his medical records are directly relevant to the action. (Doc. #271 3 (citing
13 *Seaton v. Mayberg*, 610 F.3d 530, 537 (9th Cir. 2010); *Thomas v. Carrasco*, 2010 WL
14 4024930 at *3-4 (E.D. Cal. 2010)).) The court recommended that Defendants' motion for
15 leave for *in camera* submission of Plaintiff's medical records be granted.

16 In the instant motion, Plaintiff seeks a preliminary injunction, permanent injunction,
17 and protective order against the release and disclosure of his medical records, and restates,
18 in large part, his opposition to Defendants' motion to file his medical records *in camera*.
19 (Doc. #239.) Because the court has already decided this issue in connection with its
20 recommendation that the district court grant Defendants' motion to file Plaintiff's medical
21 records *in camera*, the instant motion should be denied as moot.

22 **IT IS HEREBY RECOMMENDED** that Plaintiff's motion (Doc. #239) be **DENIED**
23 as moot.

24 The parties should be aware of the following:

25 1. That they may file, pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the
26 Local Rules of Practice, specific written objections to this Report and Recommendation within
27 fourteen (14) days of receipt. These objections should be titled "Objections to Magistrate
28

1 Judge's Report and Recommendation" and should be accompanied by points and authorities
2 for consideration by the District Court.

3 2. That this Report and Recommendation is not an appealable order and that any
4 notice of appeal pursuant to Rule 4(a)(1), Fed. R. App. P., should not be filed until entry of the
5 District Court's judgment.

6 DATED: February 10, 2011.

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UNITED STATES MAGISTRATE JUDGE